

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF YAVAPAI 2012 APR -2 PM 3:56

STATE OF ARIZONA,

Plaintiff,

vs.

STEVEN CARROLL DEMOCKER,

Defendant.

Y. BEISINGER
ORIGINAL

No.
P1300CR2010-01325

BEFORE: THE HONORABLE GARY E. DONAHOE
VISITING JUDGE OF THE SUPERIOR COURT
APPEARING TELEPHONICALLY IN ROOM 302
YAVAPAI COUNTY, ARIZONA

PRESCOTT, ARIZONA
MONDAY, APRIL 23, 2012
1:31 P.M. SESSION

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Hearing Re: Oral Argument

LISA A. CHANEY, RPR, CSR, CR
Certified Reporter
Certificate No. 50801

ORIGINAL

A P P E A R A N C E S

Appearing telephonically on behalf of the Yavapai County
Attorney's Office:

JONES, SKELTON & HOCHULI, P.L.C.
By: Ms. Georgia A. Staton,
Attorney at Law
2901 North Central Avenue
Suite 800
Phoenix, Az 85012

Appearing telephonically on behalf of the Defendant (not
present):

Mr. Craig Williams, Attorney at Law
Mr. Greg Parzych, Attorney at Law

Also Present:

Ms. Karen Clark (telephonically),
Defense Expert
Ms. Sandra K. Markham, Clerk of Superior Court
Mr. Scott Orr, Prescott Daily Courier

MONDAY, APRIL 23, 2012
1:31 P.M. SESSION

(Appearances as heretofore noted.)

01:31PM

THE COURT: Good afternoon. Perhaps I could have everybody identify who's on the phone.

MS. CLARK: Karen Clark is present on the line, Your Honor.

THE COURT: Thank you.

01:31PM

MS. STATON: Georgia Staton on behalf of the Yavapai County Attorney's Office.

MR. WILLIAMS: And this is Craig Williams and I have Greg Parzych in the room with me.

THE COURT: All right. Thank you.

01:31PM

MS. MARKHAM: Your Honor.

THE COURT: Yes.

MS. MARKHAM: Sandra Markham Clerk of Superior Court is present also.

THE COURT: Okay. Thank you.

01:31PM

And this is P1300CR2010-01325. In the matter of State of Arizona versus Steven Carroll DeMocker and this is the time we set for oral argument on the Yavapai County Attorney's Office Motion to Compel Motion of Ex Parte and Sealed Documents, and then in the interim I've also received another motion that I'll hear

1:32PM

1 today and that's the Yavapai County Attorney's Office
2 Motion for Order Allowing Management Information Systems
3 to Provide Information Regarding Documents on OnBase and
4 I've read all of the pleadings.

01:32PM

5 And, Ms. Staton, if you want to add anything
6 to the motion to compel you may.

7 MS. STATON: Well, with respect to the
8 motion to compel, Your Honor, quite frankly, I'm having
9 a hard time understanding what the problem is from the
10 DeMocker perspective, and that is, you know, on the one
11 hand they say that we've got everything, we've seen it,
12 and then on the other hand they say that we've seen most
13 of it, but not all of it. So I'm not quite sure what
14 their position is.

01:33PM

15 All I know is that in order for me to
16 effectively represent the Yavapai County Attorney's
17 Office I just want to know what the universe of
18 documents are. I want to know what they are so that I
19 am -- and full and complete copies, not just the first
20 page, so that I know what it is that we are defending,
21 so to speak, the Yavapai County Attorney's Office on and
22 I can't do it in the dark.

01:33PM

23 I mean, right now my understanding is from
24 our last conversation, Your Honor, is that you have
25 three notebooks of material. I don't know how big the

1:33PM

1 notebooks are, but three notebooks of material that was
2 provided to you by Mr. Williams and Mr. Williams
3 obviously has it because he gave it to you.

4 I'm the only one sitting here guessing but
01:33PM 5 not knowing exactly what it is that's going to be at
6 issue in this case and that's all that I'm trying to do,
7 just show me the documents so that I know how to defend
8 and, frankly, their response was a lot of hyperbole and
9 a lot of rhetoric and a lot of adjectives, but very
01:34PM 10 short on substance, and that's all I'm asking is just
11 show me the documents so that I can defend the county
12 attorney's office.

13 THE COURT: Mr. Williams.

14 MR. WILLIAMS: Well, Judge, I don't agree
01:34PM 15 with the characterization that it was a simple request
16 because in the request Mr. Yurk does say that he's going
17 to show the documents to witnesses and he's going to
18 share those.

19 I mean, in particular he names Mr. Butner
01:34PM 20 who was the lead prosecutor in the case and then the way
21 that his pleading goes on is that he contemplates
22 virtually every witness he's going to show them to and
23 our position is very simple.

24 We can start with the fact that we believe
01:34PM 25 it's unethical for us to turn the documents over for a

1 couple of reasons. First of all, the defendant has a
2 Sixth Amendment Right to effective assistance of counsel
3 and to be protected and so we believe that it's a Sixth
4 Amendment violation for us to turn it over, but also
01:35PM 5 under ER 1.6 and several other ERs we are duty-bound to
6 not give up information about our client, and don't
7 forget in this case, and I hope that this Court has read
8 that transcript that we gave you, that the transcript is
9 very detailed in what it goes into and it's the
01:35PM 10 defendant under oath testifying and the State's already
11 seen this and read this and shared this, and just
12 speaking from our standpoint, we do not believe that we
13 can ethically or under the Sixth Amendment turn it over
14 to anybody, but let's get back to Mr. Yurk's motion and
01:35PM 15 what he asked for.

16 THE COURT: Let me interrupt you. You're
17 talking about the transcript of the ex parte hearing
18 about whether Mr. DeMocker was indigent?

19 MR. WILLIAMS: Yes, and other things. Yes,
01:36PM 20 and other issues.

21 THE COURT: Yes, I have read that.

22 MR. WILLIAMS: And disbursement of money and
23 that kind of stuff.

24 There's a case that we just started reading
01:36PM 25 called State v Lenarz, which is L-E-N-A-R-Z. It's a

1 Connecticut case. It went up to the Supreme Court Circ
2 and it was denied. The case cite is 301 Connecticut
3 417. I just learned about it today. I've just been
4 reading through it. It has some interesting things in
01:36PM 5 there where it talks about the fact that prejudice
6 should be presumed when the State is looking into the
7 defense strategy and that's exactly what happened in
8 this case.

9 I don't want to just solely concentrate on
01:36PM 10 this transcript, although the transcript to me, about
11 where the State has the burden of proof beyond a
12 reasonable doubt, there's no way they're getting over
13 that, however, let's talk about these 15 9 orders and
14 the motions that the defense filed.

01:36PM 15 What is happening is that this whole time,
16 14 months, 60 times they looked at this document, it
17 wasn't accidental, it wasn't pushed on them, and so what
18 we're trying to do here is from the new attorneys is
19 that they want us to produce these documents and whereas
01:37PM 20 the State's already looked into the strategy of the
21 defense, now what we're going to do is we're going to
22 redo the Sixth Amendment violation with every single
23 person they discussed these with.

24 The purpose of the documents to prepare this
01:37PM 25 case is in and of itself a Sixth Amendment violation.

1 They can't do it. It cannot be done and --

2 THE COURT: Let me ask, as I understand --

3 let me back up. I received three volumes, as I said,

4 last time on documents. Volumes 1 and 2 are sealed

01:37PM 5 documents and it appears to me that those two volumes

6 are not in issue because those contain pleadings and

7 orders and transcripts that were available to everybody

8 or shared with everybody that were sent to everybody.

9 They were sharings -- or they were hearings related to

01:38PM 10 those pleadings in which both parties' attorneys were

11 present.

12 Am I correct on that so far, Mr. Williams?

13 MR. WILLIAMS: I would agree with that,

14 Judge.

01:38PM 15 THE COURT: So the universe of documents

16 appears to be the third volume which is labeled, at

17 least in my set of documents, the ex parte sealed

18 documents and any related orders and transcripts that go

19 with those documents.

01:38PM 20 Is that the universe of documents?

21 MR. WILLIAMS: Yes, those are the ones that

22 we are -- you know, I don't agree that the sealed

23 documents are part of the hearing because law

24 enforcement looked at those and we need to get those law

01:38PM 25 enforcement people up there and find out who told them

1 to do it, who they discussed it with because they
2 certainly weren't parties to the sealed documents, but
3 as for the Yavapai County Attorney's Office I do agree
4 that they're parties to those actions and I don't really
01:39PM 5 have a huge objection about the sealed ones.

6 My objection is to the ex parte documents.

7 THE COURT: Well, let me follow up on what
8 you just said. Do I need to get an attorney for the
9 sheriff involved in this?

01:39PM 10 MR. WILLIAMS: I think so. I think they're
11 viewing documents that they shouldn't have viewed.

12 MS. STATON: I'm not sure that that's the
13 case but, you know, I can certainly notify the sheriff's
14 counsel.

01:39PM 15 MR. WILLIAMS: And the sheriff's counsel is
16 Jack Fields who's a member of the Yavapai County
17 Attorney's Office who read the transcript and then
18 shared it with other people in the Yavapai County
19 Attorney's Office.

01:39PM 20 Judge, you can see that this is a giant
21 catch-22 that cannot be cured.

22 MS. STATON: Judge --

23 THE COURT: Just wait a second and let me --

24 MS. STATON: Sure.

01:39PM 25 THE COURT: Let me finish up with

1 Mr. Williams here.

2 MS. STATON: Okay.

3 MR. WILLIAMS: I'd like to go on, if I
4 could, Judge, I have other basis if you'd like to hear
01:40PM 5 them.

6 THE COURT: Well, yeah, I want to hear them,
7 but looking at the Court of Appeal's order and you
8 highlighted it in your response on Page 7.

9 The part about where it says in considering
01:40PM 10 the issue of prejudice I have to hear testimony about
11 any use the prosecution made of the documents. So how
12 can I -- and whether the State benefitted in any way
13 from the use.

14 So how can I make a finding about the use if
01:40PM 15 Ms. Staton can't put on witnesses that say here's the
16 document, I look at it -- or I looked at it, here's
17 what, if anything, I did with it.

18 MR. WILLIAMS: Well, because my reading of
19 the Court of Appeal's motion is that they're looking at
01:40PM 20 a frozen slice in time at the time that they were
21 already illegally viewed and printed and shredded and
22 discussed.

23 They're not contemplating continued Sixth
24 Amendment violation. So what they're suggesting is an
01:41PM 25 impossibility. The solution is disqualification not to

1 re-violate my client's Sixth Amendment Rights by
2 re-sharing documents.

3 THE COURT: But if that was the remedy, the
4 Court of Appeals -- why didn't the Court of Appeals
01:41PM 5 grant that remedy instead of ordering and remanding it
6 essentially back to me saying hold this hearing where I
7 have to look at all of these factors that go to whether
8 the defendant was prejudiced and make all of these
9 findings. If that was the remedy then why didn't they
01:41PM 10 just grant it?

11 MR. WILLIAMS: Well, Judge, because maybe
12 they wanted to give people time to analyze this and look
13 at the ethical goals, and I realize that it's a factual
14 and legal impossibility, but let's get back to the
01:42PM 15 Evidentiary Hearing.

16 What was contemplated is that we'd put
17 people on the stand, put them under oath, and ask them
18 questions, not go back over the documents with them and
19 re-violate my client's Sixth Amendment Right.

01:42PM 20 This is what it boils down to, what they
21 remember, what they saw, what they did with it, who told
22 them to do it, who told them how to dispose of it.

23 I mean, Judge, under ERs 5.1 through 5.3 it
24 very clearly says that the person who's in the
01:42PM 25 managerial position has a duty to manage the people

1 underneath him and that the ethical violations that the
2 people underneath him, even if they're not lawyers, are
3 imputed to the managerial person and that they're
4 responsible for it. So it goes all the way up to Sheila
01:42PM 5 Polk, and then as we pointed out under, I think it's
6 1.10, there's an imputation through the entire office
7 once it's happened.

8 We don't need to go back over it with them.
9 For instance, when we're contemplating a jury trial on a
01:43PM 10 first degree murder, share a document in which my client
11 was put under oath and testified so that we can
12 re-violate his Sixth Amendment Rights.

13 It's preposterous and they don't have to see
14 that to answer questions about what they did with these
01:43PM 15 documents.

16 THE COURT: But how can the State ever
17 prepare, even ask questions of the witnesses if she
18 hasn't seen the documents?

19 MR. WILLIAMS: Well, those questions have
01:43PM 20 nothing to do with the documents, Judge. The question
21 -- the way that I read the Court of Appeal's decision is
22 they state there's no question that these documents were
23 at the very least improperly seen.

24 In fact, there's a part of the Court of
01:43PM 25 Appeal's decision that talks about whether or not the

1 county attorney's office ever alerted anybody about
2 this. We know they didn't.

3 So I think that -- your question to me is
4 why didn't the Court of Appeals simply disqualify the
01:44PM 5 county attorney's office, well, I think maybe they
6 wanted to come back down so everybody had a chance to
7 look at the ethical rule, to look at what happened in
8 this and say, yeah, okay, Ms. Staton's office cannot
9 possibly do this because in order to do it they got to
01:44PM 10 re-violate my client's Sixth Amendment Rights.

11 The former employees that they talked about,
12 Joe Butner in particular, are the same as the current
13 employees. They're all subject to the same Court orders
14 and if this Court has read that transcript, Judge
01:44PM 15 Lindberg doesn't say just a little bit that this thing
16 is sealed. He orders that it's not scanned. He orders
17 the jail guards not to talk about it and for this Court
18 to say, okay, I'm going to turn it over to them so that
19 they can prepare for a hearing is only re-violating my
01:44PM 20 client's Sixth Amendment Constitutional Rights by giving
21 them a copy of the very document there's a Court order
22 in place not to have and I would also assert that this
23 amounts to a horizontal appeal which is you're having to
24 -- you're being asked to stand in and reverse Judge
01:45PM 25 Lindberg's order because they don't like Judge

1 Lindberg's order and we're not arguing a conflict
2 analysis here.

3 We're arguing constitutional violations and
4 that's really where the problem is and I also want the
01:45PM 5 Court to take into consideration that there's 14 months
6 of this spying on me, ex parte documents, 60 times. In
7 those 14 months there were new immunity agreements given
8 to witnesses. There were new indictments issued.

9 So the reason that I brought up Lenarz's is
01:45PM 10 that one of the things that they said is that there's no
11 way for the defense to prove what's in the mind of a
12 prosecutor and how the prosecutor's processing this
13 information and adjusting their case.

14 Well, in this case we know new immunity
01:45PM 15 agreements were given and new indictments were given so
16 when you look at that getting it to them, the whole --
17 the gist of this is the Sixth Amendment Violation. Now,
18 these are bootstrapped on top of the multiple ethical
19 violations and I just can't even imagine turning these
01:46PM 20 over.

21 I'd like to address one more thing. It's
22 this idea that we were obstructing by not doing it.
23 Well, that is very simple. We are subject to the same
24 Court order that they are. We cannot disclose things
01:46PM 25 that are subject to a Court order and I would submit,

1 respectfully, if the Court ordered me to disclose these
2 documents then I would have to ask for a stay and seek a
3 Special Action and go up to the Court of Appeals and say
4 the Court cannot order me to be unethical.

01:46PM

5 So that's the multitude of the issues and my
6 answer to them is that, geez, we got to operate in the
7 dark or we can't have this, well, that's because it's
8 impossible. The violations did happen and the solution
9 is disqualification not a re-violation of my client's

01:47PM

10 Sixth Amendment Rights.

11 MS. STATON: Your Honor --

12 THE COURT: Well, wait. I've got a couple
13 of more questions for Mr. Williams.

14 MS. STATON: Sure.

01:47PM

15 THE COURT: First, the Connecticut case, let
16 me make sure that I've got the cite. You said, I wrote
17 down, 301 Connecticut 417; is that correct?

18 MR. WILLIAMS: Yes. It's State v Lenarz,
19 L-E-N-A-R-Z, 301 Connecticut 417, and that's an opinion
20 out of -- looks like 2010 Cert denied on January 17,
21 2012th.

01:47PM

22 THE COURT: Okay. And then the other
23 question is that -- let me tell you what I'm thinking as
24 I discussed with Mr. Paupore a couple of conference
25 calls back, I agree with you that the prosecution team

1:47PM

1 couldn't be involved in this whatsoever. I agree with
2 you there and that's why I did my best and it worked to
3 get outside counsel involved.

4 So I've got a barrier now between the
01:48PM 5 prosecution team and what's going to go on at this
6 hearing and any viewing of these documents. So that's
7 one step at least in my mind that protects the defendant
8 from any prejudice, if there's been any in the past, any
9 future prejudice. Also the last time I said if I ordered
01:48PM 10 production of these documents I was going to enter a
11 Protective Order.

12 So, Mr. Williams, if I were to enter a
13 Protective Order that points something like this, that
14 no ex parte document or order or related transcript of
01:48PM 15 an ex parte proceeding not previously viewed by the
16 person shall be shown to any current employee of the
17 Yavapai County Attorney's Office and by that I mean if
18 that person hasn't seen the document before, Ms. Staton
19 and Ms. (sic) Yurk or anyone on her team, they couldn't
01:49PM 20 show them any other documents.

21 They would only be using the documents that
22 they've previously seen in order to prepare them and
23 find out what, if anything, they did with the
24 information in these documents at the time that they saw
01:49PM 25 whatever months or years ago.

1 So why doesn't that, the having outside
2 counsel along with a Protective Order such as I've
3 described, protect the defendant completely?

4 MR. WILLIAMS: Okay. Well, first of all,
01:49PM 5 Judge, let me start on just the most obvious part about
6 it, you're showing them a document and even people who
7 admit that they saw documents in the past, you're just
8 creating new memories and you're doing it in a way where
9 the defense isn't there, the defense doesn't know what
01:49PM 10 happens to this and isn't privy to any of their
11 reactions in there and to me that's just an absurd
12 scenario, but more importantly ER 1.4 says that cannot
13 be done.

14 You can't -- you cannot order a lawyer not
01:50PM 15 to disclose to his client what he's rightly entitled to
16 see and I want to point out on page --

17 THE COURT: Sure I can. I could order the
18 defense team, Ms. Staton and her team, not to show these
19 documents to anybody else other than the people that
01:50PM 20 have already seen them.

21 Why is that an illegal order?

22 MR. WILLIAMS: Well, Judge, they were
23 already ordered not to look at it and they didn't have
24 any problem looking at it for 14 months 60 times, you
01:50PM 25 know.

1 I don't mean to be cynical about it, but
2 you're taking documents that were ordered ex parte and
3 sealed and publishing them to people that to me by any
4 logic is another violation of the Sixth Amendment, but
01:50PM 5 let me point out Page 3 of his -- Mr. Yurk's reply in
6 support of the Motion to Compel in which he says, and
7 this is up at the top, Line 3 through 5, he explains,
8 this explains why nearly all staff and deputy county
9 attorneys consistently state that they have no
01:51PM 10 recollection of seeing any ex parte documents.

11 So when Mr. Yurk says I need to have these
12 documents and I'm going to go back and doing it, they're
13 doing exactly that, which is since this thing's been
14 going on for over a year there had to have been a fair
01:51PM 15 amount of people thinking, yeah, this is important, and
16 so when they go back and they're showing them these
17 documents, now they're being re-educated about it, and
18 even if you have like Jack Fields or Jeff Paupore and
19 you're talking about that transcript, you're publishing
01:51PM 20 to a deputy county attorney a vitally important
21 transcript in which there's still a Motion for
22 Disqualification, and disqualification isn't granted,
23 now they've gone through all of this material and
24 there's no way to unring that bell.

01:52PM 25 So ER 1.4 is your answer. Plus they had the

1 Clerk's report which talks about every single one of
2 these documents so that they can go back to the people
3 with the Clerk's report and say, okay, you're alleged to
4 have viewed this or printed this on this date. The
01:52PM 5 Jarrell report says that you printed this and then
6 shredded it, or whatever. They already can do that
7 without this Court ordering sealed ex parte documents
8 disclosed and more violations of my client's Sixth
9 Amendment Rights.

01:52PM 10 I don't think that you can get around ER
11 1.4. The State in their reply tried to talk about ER
12 1.4 like there was exceptions but I disagree with their
13 reading on that. Those exceptions do not apply here.

14 Plus, when you have Mr. Yurk or Ms. Staton
01:52PM 15 saying that they're going to share these documents, look
16 at agency law. When they're preparing for a hearing,
17 the lawyer's the agent and he know what's in the
18 document. He can't help but share what's in the
19 document if he's going to be talking to a witness and
01:53PM 20 since they don't know who viewed and who didn't view,
21 they don't know who discussed or who didn't discuss,
22 because we're -- your order, this Protective Order,
23 assumes that this is done in a vacuum, that Person A
24 viewed an ex parte document but never went and discussed
01:53PM 25 it with Person B. That's what the Evidentiary Hearing

1 would be for and that's what you'd stick them under oath
2 for and then you'd start talking to them about that.

3 So it's a misnomer to say that we can
4 insulate the new law firm, violate the constitutional
01:53PM 5 rights and give them copies of sealed ex parte documents
6 and then presume that they're not going to discuss these
7 documents with somebody else. It's a logical and
8 physical impossibility.

9 THE COURT: Okay. Ms. Staton.

01:54PM 10 MS. STATON: Yes, Your Honor. Well, it's
11 pretty clear that neither the rhetoric nor the hyperbole
12 became dissipated over the last few minutes. In fact,
13 excuse me, it seems to have been exacerbated.

14 Here's the bottom line. Mr. Williams --

01:54PM 15 MR. WILLIAMS: Judge, I'm going to object to
16 her talking to me about me about hyperbole. I've been
17 working this for a long time and I'm not the person that
18 went in and illegally viewed ex parte documents so --

19 MS. STATON: Your Honor --

01:54PM 20 MR. WILLIAMS: So I'm going to ask the Court
21 to instruct her not to criticize counsel. This isn't
22 about me. This is about what the Yavapai County
23 Attorney did. I just want to keep that clear at the
24 start.

1:54PM 25 MS. STATON: Your Honor, I did not interrupt

1 Mr. Williams.

2 THE COURT: And I don't think that she's
3 criticizing you in particular, Mr. Williams. I think
4 that she's commenting on the substance of the argument.

01:54PM

5 So, Ms. Staton, go ahead.

6 MS. STATON: Thank you, Your Honor. It's
7 fairly obvious that Mr. Williams did ask for an
8 Evidentiary Hearing and it was denied and it went up to
9 the Court of Appeals and the Court of Appeals said hold

01:55PM

10 an Evidentiary Hearing which is how Your Honor became
11 involved in this matter, but it's now pretty obvious
12 that they don't want the Evidentiary Hearing, that they
13 really want disqualification, and they're not happy that
14 the Court of Appeals has ordered that there be an

01:55PM

15 Evidentiary Hearing where these various five factors
16 have to be addressed by the Court, and the Court is
17 correct that the Yavapai County Attorney's Office has
18 been instructed that we are to put on or participate in
19 an Evidentiary Hearing where the motive and viewing or
20 printing of the specific documents at issue are
21 discussed.

01:55PM

22 What use the prosecution made of the
23 documents, whether its actions were deliberate, and
24 whether the State, quote, benefitted and then what
25 prejudice, if any, the defendant, Mr. DeMocker,

1:56PM

1 suffered. Those are the factors and I can't get away
2 from those factors. Mr. Williams cannot get away from
3 those factors and neither can the Court and legally what
4 they want now, because you heard Mr. Williams say it, if
01:56PM 5 you issue an order, which frankly makes absolutely
6 perfect sense, which is that no ex parte documents or
7 transcripts not previously viewed by a particular person
8 not be shared with that person and that's an order that
9 this Court has every right, contrary to Mr. Williams's
01:56PM 10 complaint, has every right to issue, and if you do that,
11 then we can address these factors, but if you do that,
12 Mr. Williams said I want a stay. I want to go back up
13 to the Court of Appeals and tell them basically that you
14 were wrong. You should have disqualified them and
01:56PM 15 you're wrong to have had an Evidentiary Hearing. That's
16 what he's basically arguing to the Court.

17 So all we're saying and, frankly, there was
18 a lot of detour and frolic in Mr. Williams' argument,
19 but the bottom line is that in order for us to address
01:57PM 20 those factors we need to be able to talk to our client
21 about them and I need to know what they are.

22 Now, we may have them all, but I'm not sure
23 we do because Mr. Williams sometimes says you have them
24 and then he says you have most of them, and I just don't
01:57PM 25 know if there's a differential between those two. It

1 strikes me that there is otherwise he would not have
2 been using two different adjectives to describe the
3 quantity of documents and I do know that there's only
4 like a face sheet or something and not anything below it
01:57PM 5 that I've ever seen that was produced as a part of the
6 underlying case before I became involved.

7 Mr. Williams' claim that Ethical Rule 1.4
8 prohibits the Court from issuing such an order is just
9 mistaken. He's just absolutely wrong and any affidavit
01:58PM 10 by Ms. Clark is equally in error and the fact of the
11 matter is that the Court can issue such an order.

12 You can, you know, circumscribe, if you
13 will, through the limits under which we can operate, but
14 I have to be able to put on -- I have to be able to
01:58PM 15 address the questions that the Court of Appeals asked us
16 to address and if you take Mr. Williams' position to its
17 logical conclusion, he's basically saying to the Court
18 we want a horizontal appeal. No, he does. What he
19 wants to do is he wants to say that the Court of Appeals
01:58PM 20 was wrong. You should have disqualified. There
21 shouldn't be an Evidentiary Hearing and he's trying to
22 box the Court in. He's trying to box us in, but that's
23 not what the Court of Appeals said.

24 We need to comply with that order and you
01:59PM 25 can have this Evidentiary Hearing if you permit the

1 disclosure with the -- within the context and with the
2 parameters that you've stated. You know, they're so
3 many other issues to be addressed, but I think that's
4 basically our response and we're happy to comply with
01:59PM 5 that order and it's not, quote, re-offending and all of
6 the other things that he claims were happening. We're
7 simply addressing what the Court of Appeals asked us to
8 address.

9 THE COURT: Like I said I've reviewed all of
01:59PM 10 the pleadings and the attachments and I've gone back and
11 read the Court of Appeal's decision order and for the
12 life of me I can't think of a way to do this in fairness
13 to the Yavapai County Attorney's Office to allow them
14 because they've got the burden of proof here,
01:59PM 15 Mr. Williams.

16 MR. WILLIAMS: Judge --

17 THE COURT: Wait a second. As I stated
18 before the Yavapai County Attorney's Office has the
19 burden of proof beyond a reasonable doubt as to -- that
02:00PM 20 they didn't use these documents in any way that would
21 have prejudiced the defendant and that's basically the
22 bottom line. So I just don't see how they can prepare
23 for a hearing like this and even attempt to carry their
24 burden of proof without seeing these documents so --

02:00PM 25 MS. MARKHAM: Your Honor.

1 THE COURT: I don't know who's talking, but
2 I would appreciate it if you didn't interrupt me.

02:00PM

3 I'm going to -- so I'm going to order that
4 -- grant -- I'm going to grant this Motion to Compel the
5 Production of Ex Parte and Sealed Documents.

02:01PM

6 I'm going to further order that no ex parte
7 documents related order or related transcript of an ex
8 parte proceeding not previously viewed by the person
9 shall be shown to any current employee of the Yavapai
10 County Attorney's office.

02:01PM

11 I'm sensitive to Mr. Williams' argument
12 about, you know, if he wants to go to the Court of
13 Appeals, that's fine. I'm going to stay this order for
14 five days at least until Friday, and if he can get a
15 Special Action and get the Court of Appeals to stay it,
16 that's fine, otherwise, I'm going to have all of these
17 documents produced -- I've got to look at a calendar --
18 by May -- I guess, Tuesday would be May 1st.

02:01PM

19 So if the Court of Appeals grants the stay
20 and doesn't do anything, or grants the stay, then they
21 don't have to be produced, but if there's no stay
22 granted or no Special Action filed by then without a
23 stay, then the documents need to be produced by May 1st.

2:02PM

24 MR. WILLIAMS: Judge, I'm sorry, I didn't
25 mean to interrupt you.

1 THE COURT: I'm done with that issue.

2 MS. MARKHAM: Your Honor, this is the Clerk.

3 THE COURT: Yes.

4 MS. MARKHAM: I would like to go on record
02:02PM 5 that it is -- as the Clerk of Superior Court in Yavapai
6 County it's my position that these documents are the
7 Clerk's office documents and any production needs to go
8 through the Clerk's office not MI -- Yavapai County MIS.

9 THE COURT: No. The Clerk as far as --

02:02PM 10 Ms. Markham, as far as I'm concerned the documents are
11 the Court's documents and I've got the documents sitting
12 here on my desk and all I'm ordering Mr. Williams to do
13 is produce the same documents, the same three volumes of
14 documents that have been produced to the Court of
02:03PM 15 Appeals and to me, to produce them to Ms. Staton by May
16 1st unless a stay is ordered prior to that by the Court
17 of Appeals.

18 You may have some comments about the defense
19 motion and I'm happy to hear you, but I don't think that
02:03PM 20 you've got a stake in this production of the documents.

21 Let me turn to this Motion For an Order
22 Allowing Management Information Systems to Provide
23 Information.

24 I guess, Ms. Staton, my question, again,
02:03PM 25 I've read the pleadings.

1 MS. STATON: Uh-huh.

2 THE COURT: If there was a reply filed I
3 haven't seen that so I haven't read that, but --

4 MS. STATON: There's no reply, Your Honor.

02:03PM

5 THE COURT: Okay. Why do you need this
6 information?

7 MS. STATON: Well, I think that it's
8 important because it goes to several of the factors that
9 the Court of Appeals asked us to address.

02:04PM

10 The Court of Appeals said, and this is
11 pretty much a quote, I believe, that Yavapai County
12 Attorney's Office viewed imprinted documents plainly
13 designated ex parte and/or sealed, and that's a quote
14 from the Court of Appeals.

02:04PM

15 So really the question is what is the
16 history of the document, what is on the screen at the
17 time that the particular person who supposedly viewed
18 the document, what did they see was there, did it even
19 indicate -- and it's kind of hard to describe it. You
20 kind of have to know the OnBase system.

02:04PM

21 I've learned something about it, but when
22 you look at the -- let's say, the description, let's put
23 it that way, it may just say motion. Motion. Doesn't
24 say anything else necessarily. Doesn't say that it's
25 sealed. Doesn't say ex parte. It just says motion.

02:04PM

1 And then when you click on it, you know,
2 assuming that you do, and that will all be part of the
3 hearing, then something may pop up at that point that
4 says sealed or may say ex parte sealed or something like
02:05PM 5 that, but you won't know until you've clicked on it
6 because there's nothing on the screen.

7 Then there's history. See, each of the --
8 because they can do this, if you have, for example, a
9 motion, you can look at the history of that motion.

02:05PM 10 Every time somebody looked at that motion and how it was
11 -- what's the word I'm going to say -- characterized,
12 whether it's just put into the system, stamped and put
13 in, who put it in, was it given some designation,
14 sealed, ex parte or just, you know, blank. It didn't
02:05PM 15 give any kind of a characterization and then when -- if
16 at some point the Clerk's office did add the term
17 scanned or sealed to the documents, to the description
18 of the document, so it's important when you're dealing
19 with these five factors, which is the motive in viewing
02:06PM 20 and in printing, you know, whether their actions were
21 deliberate or not to find out what the history of the
22 document is and how the Clerk of the Court had
23 designated those documents from the time that the
24 document was put in until the very last time that it was
02:06PM 25 viewed and that will tell you in large part what the,

1 quote, motive was -- or I mean it won't tell you, but it
2 will allow us to explain to the Court what the motive
3 was and what was in front of either the Clerk or whoever
4 it was that was, you know, just printing these things
02:06PM 5 off right from the get-go.

6 THE COURT: But don't we have that
7 information already in the --

8 MS. STATON: No.

9 THE COURT: -- in the Clerk of the Court's
02:06PM 10 report that says, you know, these documents --

11 MS. STATON: No.

12 THE COURT: -- were -- well, okay.

13 MS. STATON: I guess --

14 THE COURT: The second question --

02:06PM 15 MS. STATON: Uh-huh.

16 THE COURT: -- is why can't you just ask the
17 person that looked at the document what they saw on the
18 screen and how they accessed it?

19 MS. STATON: Well, you can't because --

02:07PM 20 well, first of all, most of them say I don't remember
21 seeing this ex parte thing, I wasn't even looking at it,
22 but the history of it will tell you. It will tell you
23 exactly how the Clerk's office characterized the
24 documents.

02:07PM 25 So that if you're sitting at your computer,

1 assuming that you do that, and you were to look at
2 something that said motion, and you want to say, gee,
3 motion for what, and you click it on, and all of a
4 sudden it says ex parte, okay, now, you have a history
02:07PM 5 that says it's ex parte but it wasn't on the screen.

6 Now, maybe later, two days later or a week
7 later, the Clerk's office goes back and adds the word
8 sealed or some other denomination to the little title.
9 So --

02:07PM 10 THE COURT: Yes, but what I'm suggesting is
11 let's say that Witness A says that, yes, I looked at --
12 I looked at Motion A and I remember clicking on OnBase
13 and there was nothing there to alert me that it was
14 sealed or ex parte or that I couldn't look at it.

02:08PM 15 MS. STATON: Right.

16 THE COURT: Why do you need more?

17 MS. STATON: Well, you do because, I
18 believe, and that's why I wanted this confirmed, but I
19 believe that there's been a change from the beginning.

02:08PM 20 I mean, for example, when the person looked at it, it
21 may not have had that characterization, later on the
22 Clerk's office may have added that characterization, but
23 not at the time the person looked at it.

24 All we've got is what the Clerk's office
02:08PM 25 says not the actual history and you can go back and you

1 can get -- and that way you don't have to necessarily
2 believe Joe Blow or Suzie Q. You've got not only their
3 testimony, but you've got the actual history of the
4 document.

02:08PM

5 I mean, and I think that's important for the
6 Clerk -- for the Court to know not only for you to know
7 for the findings of fact and for the conclusions, but
8 for any subsequent appeal as to -- so that we can
9 address that motive and the use and whether it was

02:09PM

10 deliberate or not. It's supportive, otherwise, frankly,
11 we're hamstrung because we need to see the history of
12 those documents and how those characterizations changed
13 which I believe they did.

02:09PM

14 THE COURT: And have you talked to somebody
15 in either the Clerk's office or that's --

16 MS. STATON: Ms. Murphy?

17 THE COURT: Yeah.

18 MS. STATON: Yes. Yes, I have.

02:09PM

19 THE COURT: As far as the Information
20 Systems?

21 MS. STATON: Yes.

22 THE COURT: Can they print out -- or can
23 they print out a history?

02:09PM

24 MS. STATON: They can do that, yes, they
25 can.

1 THE COURT: Showing when it was actually
2 imaged on OnBase and when --

3 MS. STATON: Yes.

4 THE COURT: When it was and the access
02:09PM 5 rights and all of that stuff?

6 MS. STATON: Yes, they can do all of that
7 and it would just be obviously for those very specific
8 documents that are now at issue, which I understand --
9 well, I believe that I understand now is just Volume 3
02:09PM 10 which is the ex parte slash sealed documents.

11 THE COURT: And why -- why -- my other
12 question is why do I need or why do we want to sidestep?
13 Why can't the Clerk of the Court provide this
14 information as opposed to Management Information?

02:10PM 15 MS. STATON: Well, I guess there's been --
16 because, frankly, there's a neutral -- MIS is a neutral
17 party. I mean, they're the ones that set up this OnBase
18 system. Susan Murphy is probably the one most
19 knowledgeable about it.

02:10PM 20 You heard the Clerk of the Court taking a
21 position in this case earlier which on an issue that
22 really is not, you know, not part of her duties and this
23 is just -- this is just somebody who is an expert on
24 OnBase and is a technology person. They don't have a
02:10PM 25 dog in this fight and that's the bottom line. They're a

1 neutral party and they can say here's the history of
2 these.

3 I don't know if we're talking about 10
4 documents or, you know, 50 documents, but whatever that
02:10PM 5 little number is, they can show you what the history is
6 and that way you don't have to believe Mr. Williams, you
7 don't have to believe me, you don't have to believe the
8 Clerk of the Court. You can just say this is the
9 history of the document because there it is on the
02:11PM 10 computer.

11 THE COURT: Okay. Let me hear from
12 Mr. Williams and then I'll hear from Ms. Markham too if
13 she's got a position on this.

14 Mr. Williams.

02:11PM 15 MR. WILLIAMS: Well, Judge, how about if we
16 just believe that when you look at the document and it
17 says sealed and ex parte right on the document, why
18 don't we believe where it says viewed and printed when
19 they printed the document they can see sealed and ex
02:11PM 20 parte on there.

21 We don't need somebody to explain the
22 history when we've got viewed and printed by numerous
23 people. So this is just a smoke screen to try to say,
24 oh, well, you know, gee, maybe it's the Clerk's office
02:11PM 25 fault that they didn't exactly put on there, but if you

1 look at the document title under the Clerk's report this
2 is as thorough as it could get.

3 If it says viewed, that's what it means,
4 viewed, and to call MIS a neutral party is a real reach
02:12PM 5 when you're talking about a small county government and
6 I just -- this is just another huge red herring and this
7 is not what the Court of Appeals contemplated.

8 The Court of Appeals already said these
9 violations happened, let's have a hearing on it and see
02:12PM 10 what happened, not let's try to explain away the
11 violations by going, dog-gone it, when I viewed and
12 printed this document that says sealed and ex parte
13 right on the sheet of the document, and we know that
14 they have the face sheet, that -- this whole request to
02:12PM 15 me is improper since they had the face sheet. They've
16 seen the documents that defendants viewed and printed.
17 To me it's a huge red herring and this Court really has
18 to deny this motion.

19 THE COURT: Ms. Markham.

02:12PM 20 MS. MARKHAM: Yes, sir.

21 THE COURT: Do you have any position
22 regarding having Management Information Systems provide
23 this history of these documents?

24 MS. MARKHAM: The -- it is my position that
02:13PM 25 the -- that this is the Court file and it resides -- the

1 OnBase documents reside on a county server, but that
2 they are the -- these documents are the Clerk of Court's
3 documents and the request needs to go through the Clerk
4 of Superior Court.

02:13PM

5 THE COURT: Well, let me ask, Ms. Markham,
6 if I were to order the Clerk of the Court to provide
7 this history, each of these documents, once they're --
8 what would happen, I guess, is that we'd give you a list
9 of the ex parte pleadings and any related orders and
10 transcripts, you just get the title.

02:13PM

11 Is it possible for the Clerk of the Court to
12 then say, okay, I can print out a history of these --
13 each of these documents? Is that possible?

14 MS. MARKHAM: Yes, sir.

02:14PM

15 THE COURT: Okay. And would that history
16 show, for example -- well, tell me just briefly what
17 would this history show?

18 MS. MARKHAM: Exactly what Ms. Staton said.
19 It will show every person that viewed that document and
20 what activity occurred with that document. For
21 instance, if they viewed only or if they printed it.

02:14PM

22 THE COURT: So it would show when it was
23 actually put on, imagined on the OnBase system?

24 MS. MARKHAM: Correct.

2:14PM

25 THE COURT: And then it would show who at

1 least clicked on the document, their identifier, I'm
2 assuming?

3 MS. MARKHAM: Yes.

02:14PM 4 THE COURT: And now I've never used the
5 OnBase -- well, I have. I think our Clerk of the Court
6 used the OnBase. In order for me to view a sealed
7 document I had to enter -- I had a security code, a
8 special code, that gave me access to sealed documents.

02:15PM 9 Does that -- is that a requirement of your
10 system too?

11 MS. MARKHAM: That is a requirement of our
12 system.

02:15PM 13 THE COURT: So would it show the -- is that
14 how the person would be identified because they would
15 have had to enter a code in to get to the sealed
16 document and that code then is associated with a
17 particular person?

02:15PM 18 MS. MARKHAM: The security settings have
19 been changed, Your Honor, so if you ask me for this 14
20 month window my answer would be different.

21 THE COURT: Okay. Well, the document I'm
22 looking at here was filed in July, on July 21st of 2009.
23 It's just one of the Rule 15.9 motions that the
24 defendant filed and so back in July of 2009 that was
25 imaged. It was suppose to be sealed.

02:16PM

1 So if I wanted to view that back in July or
2 August of 2009 once I clicked on it would I have had to
3 enter a separate access code in order to view it?

02:16PM 4 MS. MARKHAM: No, but you as a Judge would
5 be given that permission.

6 THE COURT: So I would automatically see it.
7 How about if I was an attorney in the county attorney's
8 office?

02:16PM 9 MS. MARKHAM: We now know that they were
10 apparently viewing them.

11 THE COURT: Yeah, but did they have to enter
12 a separate code in order to view them?

13 MS. MARKHAM: No.

14 THE COURT: That's my question.

02:16PM 15 MS. MARKHAM: No.

16 THE COURT: And so that's not going to show
17 up in the history of these documents if that history
18 were given.

02:16PM 19 Okay. Ms. Staton, did you want to add
20 anything else?

21 MS. STATON: The only thing that -- I would,
22 Your Honor, is the person, Ms. Murphy, who we sent you,
23 I think, her CV, she is the one that is probably most
24 knowledgeable of any one in the State. She can produce
25 the history and how it was characterized and the

02:17PM

1 changes, if any, to the description given by the Court
2 and any changes and permissive views and she can do it
3 in a spreadsheet format, I believe, and it would -- it
4 would help the Court to address in the findings of fact
02:17PM 5 and in the conclusions those two issues, which is the
6 motive by the prosecution's office in viewing the
7 documents or printing it, and whether their actions were
8 deliberate or not, and that's why we need the history
9 and to get it from MIS is a lot easier, frankly, than
02:17PM 10 getting it from the Clerk of the Court because the Clerk
11 of the Court would not even speak to -- and they have
12 their reasons and, you know, I wasn't even a part of it
13 at the time but would not speak to the investigator who
14 was trying to get to the bottom of it.

02:18PM 15 And, you know, we are under a very short
16 time string, which I guess the third part of this
17 conference is, you know, what our prehearing schedule is
18 going to be like. So we don't have a lot of time to
19 waste and MIS, like I said, is a disinterested, neutral
02:18PM 20 party. They could care less about these documents.

21 They can just print them out and provide the
22 information that we need and if Mr. Williams wants to
23 ask Ms. Murphy questions he certainly can and, you know,
24 I'll work with him to make her available so that we can
02:18PM 25 at least move this thing along.

1 THE COURT: Okay. Let me go back to
2 Ms. Markham. If -- Ms. Markham, how -- if I were to
3 order a production of this history, how would the Clerk
4 of the Court go about getting it?

02:18PM

5 MS. MARKHAM: The same way as Ms. Murphy.

6 THE COURT: You would ask Management
7 Information Systems to provide it to you?

8 MS. MARKHAM: No. We have OnBase and so we
9 would create the same thing that Ms. Murphy can.

02:19PM

10 MS. STATON: Could I ask, if that's -- I
11 don't know how, but if I could ask for it in a certain
12 format so that I could at least know it's covering
13 everything that I would need, you know, that would be
14 helpful.

02:19PM

15 MS. MARKHAM: Sure.

16 MS. STATON: I just have -- I just feel like
17 I can get cooperation from Ms. Murphy and I'm not
18 certain, honestly, that I can from the Clerk of the
19 Court just because of their reluctance to engage in, you
20 know, the interview process with the county attorney's
21 office earlier.

02:19PM

22 THE COURT: Well, let me ask, Ms. Markham,
23 is there some reluctance to provide this information?

24 MS. MARKHAM: No, sir.

02:19PM

25 THE COURT: Okay.

1 MS. MARKHAM: I just feel that it needs to
2 come through the Clerk of Superior Court. These are
3 my --

4 THE COURT: So once the documents are
02:19PM 5 identified -- well, I guess, they've already been
6 identified. You know what documents we're talking
7 about.

8 How long would it take to produce this type
9 of report?

02:20PM 10 MS. MARKHAM: Not very long at all.

11 THE COURT: Like a day or two or a week?

12 MS. MARKHAM: We could definitely have it
13 done by Friday.

14 THE COURT: Okay. So -- all right. Well,
02:20PM 15 let me do this, I'm going to at least grant this motion
16 in part so that everybody is provided this information
17 regarding these documents on the OnBase system, but I'm
18 going to order that this entry be provided by the Clerk
19 of the Court's office no later than -- what's Friday --
02:20PM 20 the 27th.

21 And then, Ms. Markham, whatever report you
22 provide you need to provide it to both Ms. Staton and
23 Mr. Williams so that they both get the same report
24 regarding these documents.

02:21PM 25 MS. STATON: Your Honor, this is Georgia

1 Staton. May I just inquire of something, please?

2 THE COURT: Sure.

3 MS. STATON: You granted a stay for a period
4 of time to allow Mr. Williams to take an appeal if he
02:21PM 5 wants to and so I'm still -- the documents were -- the
6 history that Ms. Markham would produce has got to be all
7 inclusive of all of the documents that are going to be
8 at issue here. So we're really not going to know that
9 until the stay is over.

02:21PM 10 THE COURT: She knows the documents because
11 there's a Court report that lists all of the documents
12 that were viewed and I believe that Judge Mackey said
13 here's the universe of documents that shouldn't have
14 been viewed, they should have been sealed, and --

02:21PM 15 MS. STATON: Right.

16 THE COURT: -- she knows the documents.

17 MS. STATON: If that's the universe, that's
18 fine. I'm just trying to get confirmation from
19 Mr. Williams that there's nothing else.

02:22PM 20 And, second of all, you know, I'd like to
21 make sure that the report, the history, contains the
22 information that we need. So, you know, I would ask
23 Ms. Markham's cooperation and I'd like to be able to
24 contact her probably tomorrow and explain at least in
02:22PM 25 sort of a spreadsheet format what information we're

1 looking for.

2 THE COURT: Well, I'm sure that she'll talk
3 to you, but I think that she knows what you want. You
4 want to know when -- not only when they were imaged on
02:22PM 5 OnBase, but what access restrictions if any were, and if
6 there were access restrictions, when they were put on
7 there.

8 MS. STATON: Right, and how the document was
9 described by the Clerk of the Court's office from the
02:22PM 10 time that it was put on until, I guess, the present
11 because that's changed, I believe.

12 THE COURT: I don't know. I don't know.

13 MS. STATON: I believe, but, you know,
14 that's what I'm waiting to see. So it's not just who
02:23PM 15 accessed it and what was their access level, but how was
16 the document described, did it say motion and that's all
17 you'd ever seen on the screen until you actually click
18 on and then you'd see maybe it had something else on
19 there like ex parte. Then you would have, quote, viewed
02:23PM 20 it just because it said motion, you know, or did it say
21 motion, slash, ex parte on the little screen and you
22 wouldn't click on or be able to click on. I mean,
23 there's all kinds of issues involved in this and that's
24 what I'm trying to get.

02:23PM 25 THE COURT: Well, let me ask, Ms. Markham,

1 on the report would it show the screen identifier of
2 each of these documents?

3 MS. MARKHAM: It will show what the person
4 was looking at when they clicked on the document.

02:24PM 5 THE COURT: Yeah, so if it's a motion or
6 motion such and such that would be appear in the report
7 at least the title of the document that the person saw
8 on the screen before they clicked on it?

9 Is that right?

02:24PM 10 MS. MARKHAM: Yes, sir.

11 THE COURT: Okay.

12 MS. STATON: Okay.

13 THE COURT: All right. So, yeah,
14 Ms. Staton, you were -- I asked you and Mr. Williams
02:24PM 15 perhaps to talk about a schedule here.

16 Did you come up with one?

17 MS. STATON: Yes, actually we did and we
18 pretty much agree on it. Let's see, here's what we
19 suggested, and Mr. Williams can correct me if I'm wrong,
02:24PM 20 we have May 4th we will submit an initial disclosure of
21 persons who, you know, what you said, viewed each
22 document, a description of each document, reason for
23 viewing and what was done with the information and
24 hopefully we can do that given the May 1st deadline and
02:25PM 25 that is that those documents will be -- if no stay they

1 will be delivered to us on May 1st and that only gives
2 us three or four days then so we may have to push that
3 back just a bit.

4 May 16th Mr. Williams will complete all
02:25PM 5 witness interviews and submit a comprehensive disclosure
6 of witnesses not disclosed by the county attorney's
7 office in conforming with your order.

8 May 23rd we will complete all of our witness
9 interviews and then on May 28th both parties submit
02:25PM 10 proposed findings of fact and conclusions of law.

11 So that's what we kind of agreed to. The
12 May 4th date, which was the date that we said that we
13 would have our initial disclosure, frankly, I was
14 assuming that we would have the documents, you know,
02:25PM 15 sooner than May 1st which is next Tuesday and May 4th is
16 Friday.

17 So actually I'd like to have -- I'd like to
18 have at least five days after I get the documents if
19 it's going to be delayed until the 1st. I just don't
02:26PM 20 know when Mr. Williams will get them to me and/or if he
21 intends to appeal something.

22 THE COURT: Let me -- again, I need to look
23 at a calendar here so you got -- they're produced on May
24 1st. You want until like May 7th to --

02:26PM 25 MS. STATON: Yeah, I'd like at least until

1 May 7th because if they're delivered to us on the 1st
2 that at least gives us, you know, four days -- well,
3 that gives us three days plus a weekend, that's cutting
4 it close but I'd like at least that.

02:26PM 5 THE COURT: Let me ask is Mr. Parzych still
6 there?

7 MR. PARZYCH: I am, Judge.

8 THE COURT: Do you have these three volumes
9 of documents?

02:26PM 10 MR. PARZYCH: In my lap, Judge.

11 THE COURT: Okay. So if the Court of
12 Appeals doesn't stay this, could you make a copy and
13 have a runner or somebody deliver them to Ms. Staton's
14 office by the 1st?

02:27PM 15 MR. PARZYCH: Sure, Judge. They're
16 downtown, correct?

17 THE COURT: Yeah, they're in Phoenix, and I
18 figured since you're in Phoenix, that would be easiest
19 way.

02:27PM 20 MR. PARZYCH: Yeah, yes, Judge, I can do the
21 delivery on the 1st.

22 THE COURT: Okay. So let me go through the
23 schedule again. So it would be instead of May 4th it
24 would be May 7th for the Yavapai County initial
25 disclosure.

1 May 16 for defense to complete interviews
2 and identify its witnesses.

3 May 23 would be for the Yavapai County
4 Attorney's Office to complete interviews and then what
02:27PM 5 was the last date for the proposed findings?

6 MS. STATON: The 28th, Your Honor.

7 THE COURT: May 28th.

8 Okay. Let me ask, Mr. Williams or
9 Mr. Parzych, is that schedule okay?

02:27PM 10 MR. WILLIAMS: No, you missed one date. We
11 agreed to the 16th not the 15th of May --

12 MS. STATON: Oh.

13 MR. WILLIAMS: -- for our completing witness
14 interviews and I'd really push that back to the 18th.

02:28PM 15 If they're going to have until the 7th, extra time, I
16 want to ask for extra time. I think we can get
17 everything done that way.

18 THE COURT: So it would be May 7th, May 18th
19 and May 28th. What's the -- 23rd, okay, May 23rd and
02:28PM 20 then the 28th for the proposed findings of fact.

21 Ms. Staton, is that schedule okay?

22 MS. STATON: It is. You know, if I ask for
23 one more day, Mr. Williams would ask for one more day,
24 and I just figure let's just get it done and move
02:28PM 25 forward.

1 THE COURT: All right. So I'm going to
2 adopt this new schedule so everybody's got it down.
3 It's May 7th for the Yavapai County Attorney's initial
4 disclosure.

02:29PM 5 May 18th for the defendants to complete any
6 desired interviews and identify any additional
7 witnesses.

8 May 23rd for the Yavapai County Attorney's
9 Office to complete its interviews.

02:29PM 10 May 28th for proposed findings of fact and
11 conclusions of law and I'd like those submitted to me
12 electronically in Word format and you can send those to
13 either one of my e-mails that you've been using.

14 Okay. Anything else we want to talk about
02:29PM 15 this afternoon?

16 MR. PARZYCH: Well, Judge --

17 THE COURT: Yes.

18 MR. PARZYCH: Judge, I'm sorry, this is Greg
19 Parzych and I just wanted to make sure that this is
02:29PM 20 completely clear because I suspect that this will be
21 going up.

22 We specifically do want the Evidentiary
23 Hearing. So that's not an issue. We do want the
24 Evidentiary Hearing. We just don't believe that
02:30PM 25 witnesses have to be shown the documents again. We

1 believe that they just have to testify as to what they
2 did at that time without ever having showing them the
3 documents again.

4 So I know that Ms. Staton made the comment,
02:30PM 5 we're not asking, we don't want the hearing, we do want
6 the hearing just so that's clear for the record for the
7 Court of Appeals.

8 THE COURT: I think everybody's position is
9 pretty clear.

02:30PM 10 MR. PARZYCH: Okay.

11 THE COURT: So the transcript hopefully
12 would go to the Court of Appeals of today's hearing
13 along with your Special Action.

14 Okay. I need to talk to Judge Mackey's JA
02:30PM 15 for a minute so -- is she busy? If somebody could alert
16 her. She was going to transfer me back after you all
17 got off the phone. So you all --

18 MR. WILLIAMS: Judge, before I go I'd ask
19 the court reporter to expedite a hearing transcript so
02:30PM 20 that we can Special Action this order and -- but we're
21 going to need a transcript to do it with.

22 THE COURT: Okay.

23 MR. WILLIAMS: Okay.

24 THE COURT: All right. Thank you.

02:31PM 25 MR. WILLIAMS: Thank you.

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MS. STATON: Thank you, Judge.

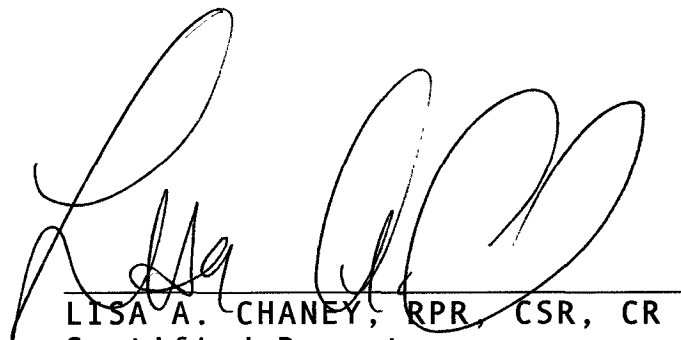
(Whereupon, the proceedings were concluded.)

C E R T I F I C A T E

STATE OF ARIZONA)
)
COUNTY OF YAVAPAI)

I, Lisa A. Chaney, a Certified Reporter, in the State of Arizona, do hereby certify that the proceedings had in the foregoing entitled matter are contained fully and accurately in the shorthand record made by me thereof, and that the following pages constitute a full, true and accurate transcript of the said shorthand record, all done to the best of my skill and ability.

DATED this 25th day of April, 2012.



LISA A. CHANEY, RPR, CSR, CR
Certified Reporter
Certificate No. 50801